

November 8, 2010

I appreciate the hard work and time that has gone into the creation of this draft document, and the opportunity to submit comments. My comments are specific to Section 10 “TMDL Implementation and Adaptive Management”, sections 10.1 through 10.3, and are especially responsive to the Draft Appendix S “Offsetting New or Increased Loadings of Nitrogen, Phosphorus and Sediment to the Chesapeake Bay Watershed”.

The Biophilia Foundation has extensive experience generating measurable nutrient credits, with wildlife habitat co-benefits from our on farm project work. We have developed both a qualitative nutrient credit protocol and a quantitative standard assessed *in situ* post implementation by a third party using the Chesapeake Bay Watershed Model. These protocols and descriptions can be found as attachment A.

Biophilia Foundation currently has credits listed for presale online through Mission Markets Earth ([www.missionmarkets.com](http://www.missionmarkets.com)). Although these credits are available for sale on a voluntary basis, nonetheless they represent the most credible, efficient, and direct philanthropic investment in Chesapeake Bay restoration currently available. It is precisely for these reasons that a robust, efficient, credible, and transparent regulatory marketplace must be created in the Chesapeake Bay Watershed. There is simply no other mechanism that can attract private capital and create private/public partnerships across economic and political interest boundaries sufficient to clean the waters of Chesapeake Bay.

I respectfully point out that as currently contemplated by most trading theoreticians, and as currently described in the draft document, trading programs will be very difficult to create, as the market will be slow to develop given the requirements of nonpoint source credit generators to first reach “Baseline”. Additionally, waste water point sources have years of capacity to accommodate growth before they will have the need to purchase a few credits in only a few watersheds. Given these and other disincentives to market development (the most egregious example being Maryland Department of Agriculture’s (MDA) insistence that MDA be allowed to determine practice efficacy, monitor practices internally, and restrict credit generation eligibility to no more than 15% of a farm’s total acreage for conversion to the most efficient, measurable, and valuable BMP’s, those being wetland and vegetated buffer restoration) it is very possible that trading mechanisms will not contribute to achieving TMDL and WQS goals until after 2017, and even then only marginally.

This would be tragic, as trading mechanisms have tremendous potential to attract private capital, and provide an economically sound model around which private and public interests can form partnerships to achieve TMDL and WQS goals. There needs to be a true “Game Changing” creation of robust, quantifiable and accountable credit trading markets that bring substantial private funding and stakeholder participation to bear; in other words, there first needs to be an economically viable public/private partnership across political and private interest boundaries to **first achieve TMDL WQS, and then achieve continued improvement**, not the other way around as currently contemplated.

To better illustrate my vision and recommendations, as I have tried to articulate through my track changes and comments to the proposed TMDL sections, I offer the following scenario for consideration, based on the model and success BF has had as described in attachment A.

**B i o p h i l i a   F o u n d a t i o n**

61 Cornhill Street, Annapolis, Maryland 21401   Phone 410-268-1802 Fax 410-268-1803

The track changes and comments that follow in the draft document are based upon implementing this scenario.

Current and future economic activity (development) must be used to help finance current and future pollution load offsets, to achieve Chesapeake Bay TMDL and WQS goals as quickly as possible, as well as provide environmental improvement. EPA and others (Environmental Defense Fund) have GIS based site design analytical tools that can be used to analyze the water quality impacts of development projects. Those impacts that cannot be mitigated economically on-site must be offset off site. This could be done as fee-in-lieu payments ("offset credits" issued by jurisdictions) which represent additional sources of dedicated funds to repay bonds used by jurisdictions to retrofit past stormwater and other point source pollution emissions. Additionally, development projects should also be required to buy "uplift credits" from nonpoint source polluters within the same watershed. Instead of first achieving a "baseline" to be eligible to generate an "uplift credit", each "uplift credit" would need to be bought along with the purchase of an "offset credit" from the nonpoint credit generator. This 3:1 scenario is much easier to achieve near term and with greater market creation potential than what has been proposed by proponents of a "Baseline first" approach.

Biophilia Foundation has been in discussion with several well known agricultural and development interests who approve of this approach. We have also been in contact with a jurisdiction who is interested in developing a demonstration project to test this approach for possible inclusion in their WIP II. If EPA is interested in this project, EPA's participation would be most welcome.

I hope these comments and suggestions prove useful. I would be happy to provide additional clarification and information if needed.

Sincerely,

Richard Pritzlaff  
President.

**B i o p h i l i a   F o u n d a t i o n**

61 Cornhill Street, Annapolis, Maryland 21401 Phone 410-268-1802 Fax 410-268-1803